

HONORABLE MICHELLE L. PETERSON

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILD FISH CONSERVANCY, ) Case No. 2:20-cv-417-RAJ-MLP  
Plaintiff, ) DEFENDANTS' ANSWER  
v. )  
BARRY THOM, *et al.*, )  
Defendants, )  
and )  
ALASKA TROLLERS ASSOCIATION, )  
Defendant-Intervenor. )

1 Defendants Barry Thom, in his official capacity as Regional Administrator of the  
2 National Marine Fisheries Service (NMFS); Chris Oliver, in his official capacity as Assistant  
3 Administrator of NMFS; NMFS; Wilbur Ross, in his official capacity as the Secretary of the  
4 U.S. Department of Commerce; and the U.S. Department of Commerce (collectively,  
5 Defendants) by and through its undersigned counsel, hereby answer the claims and allegations  
6 made by Plaintiff in the Complaint (Dkt. # 1). All allegations of the Complaint that are not  
7 specifically admitted, denied, or qualified are hereby expressly denied.  
8

9       1. Defendants admit the allegations contained in Paragraph 1.

10      2. In response to the allegations contained in the first sentence of Paragraph 2,

11 Defendants admit that a Southern Resident killer whale (SRKW) carried her dead calf, but aver  
12 that the calf was female. The remaining allegations contained in the first sentence of Paragraph 2  
13 are too vague and ambiguous to permit a response, and Defendants deny them on that basis. In  
14 response to the allegations contained in the second sentence of Paragraph 2, Defendants admit  
15 that the SRKW known as Scarlet disappeared, but aver that she was not of reproductive age.  
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17 Defendants lack information or knowledge sufficient to form a belief as to the truth of the  
18 remaining allegations contained in the second sentence of Paragraph 2, and deny the allegations  
19 on that basis. Defendants lack information or knowledge sufficient to form a belief as to the truth  
20 of the allegations contained in the third sentence of Paragraph 2, and deny the allegations on that  
21 basis.  
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23       3. Defendants lack information or knowledge sufficient to form a belief as to the  
24 truth of the allegations contained in Paragraph 3, and deny the allegations on that basis.  
25

26       4. In response to the allegations contained in Paragraph 4, Defendants aver that the  
27 three most important limiting factors appear to be prey quantity and quality, disturbance from  
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1 sound and vessels, and toxic contaminants. Defendants deny the remaining allegations contained  
2 in Paragraph 4.

3       5. In response to the allegations contained in the first sentence of Paragraph 5,  
4 Defendants admit that the Secretary of Commerce has delegated to NMFS the authority to  
5 regulate fisheries in the Exclusive Economic Zone (EEZ). The remaining allegations contained  
6 in the first sentence of Paragraph 5 are conclusions of law, to which no response is required. To  
7 the extent that a response is required, Defendants deny each allegation. In response to the  
8 allegations contained in the second sentence of Paragraph 5, Defendants admit that Chinook  
9 salmon are migratory and cross borders. The remaining allegations contained in the second  
10 sentence of Paragraph 5 purport to characterize the Pacific Salmon Treaty (PST), which speaks  
11 for itself and is the best evidence of its contents. Defendants deny any allegation inconsistent  
12 with the PST's plain language, context, or meaning. The allegations contained in the third,  
13 fourth, and fifth sentences of Paragraph 5 purport to characterize the PST, which speaks for itself  
14 and is the best evidence of its contents. Defendants deny any allegation inconsistent with the  
15 PST's plain language, context, or meaning. The allegations contained in the sixth sentence of  
16 Paragraph 5 are conclusions of law, to which no response is required. To the extent that a  
17 response is required, Defendants deny each allegation.

21       6. In response to the allegations contained in Paragraph 6, Defendants admit that  
22 NMFS issued a Biological Opinion (BiOp) on April 5, 2019 entitled "Endangered Species Act  
23 (ESA) Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and  
24 Management Act Essential Fish Habitat Response, Consultation on the Delegation of  
25 Management Authority for Specified Salmon Fisheries to the State of Alaska." The remaining  
26 allegations contained in Paragraph 6 purport to characterize the BiOp, which speaks for itself and  
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1 is the best evidence of its contents. Defendants deny any allegation inconsistent with the BiOp's  
2 plain language, context, or meaning.

3       7. In response to the allegations contained in the first sentence of Paragraph 7,  
4 Defendants admit that the Puget Sound, Lower Columbia River, Upper Willamette River, and  
5 Snake River fall-run Chinook salmon are listed as threatened evolutionarily significant units  
6 (ESU). The remaining allegations contained in the first sentence of Paragraph 7 are too vague  
7 and ambiguous to permit a response, and Defendants deny them on that basis. Defendants deny  
8 the allegations contained in the second sentence of Paragraph 7.

9       8. The allegations contained in Paragraph 8 purport to characterize the BiOp, which  
10 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
11 inconsistent with the BiOp's plain language, context, or meaning.

12       9. The allegations contained in Paragraph 9 purport to characterize the BiOp, which  
13 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
14 inconsistent with the BiOp's plain language, context, or meaning.

15       10. The allegations contained in the first, second, third, fourth, and fifth sentences of  
16 Paragraph 10 purport to characterize the BiOp, which speaks for itself and is the best evidence of  
17 its contents. Defendants deny any allegation inconsistent with the BiOp's plain language,  
18 context, or meaning. The allegations contained in the sixth sentence of Paragraph 10 purport to  
19 characterize unidentified data, which speaks for itself and is the best evidence of its contents.  
20 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
21 unidentified data.

1       11. The allegations contained in Paragraph 11 purport to characterize the BiOp, which  
2 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
3 inconsistent with the BiOp's plain language, context, or meaning.

4       12. The allegations contained in Paragraph 12 purport to characterize the BiOp, which  
5 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
6 inconsistent with the BiOp's plain language, context, or meaning.

7       13. The allegations contained in Paragraph 13 consist of characterizations of the  
8 Complaint and the relief requested, to which no response is required. To the extent that a  
9 response is required, Defendants deny each allegation.

10       14. Defendants lack information or knowledge sufficient to form a belief as to the  
11 truth of the allegations contained in Paragraph 14, and Defendant deny them on that basis.

12       15. Defendants lack information or knowledge sufficient to form a belief as to the  
13 truth of the allegations contained in Paragraph 15, and Defendant deny them on that basis.

14       16. Defendants lack information or knowledge sufficient to form a belief as to the  
15 truth of the allegations contained in Paragraph 16, and Defendant deny them on that basis.

16       17. The allegations contained in Paragraph 17 are conclusions of law, to which no  
17 response is required. To the extent a response is required, Defendants deny each allegation.

18       18. The allegations contained in the first and third sentences of Paragraph 18 are  
19 conclusions of law, to which no response is required. To the extent a response is required,  
20 Defendants deny each allegation. Defendants lack information or knowledge sufficient to form a  
21 belief as to the truth of the allegations contained in the second sentence of Paragraph 18, and  
22 Defendant deny them on that basis.

1       19. The allegations contained in Paragraph 19 are conclusions of law, to which no  
2 response is required. To the extent a response is required, Defendants deny each allegation.

3       20. In response to the allegations contained in the first and second sentences of  
4 Paragraph 20, Defendants admit that Barry Thom is the Regional Administrator for the West  
5 Coast Region of NMFS. The remaining allegations contained in the first and second sentences of  
6 Paragraph 20 are conclusions of law, to which no response is required. To the extent a response  
7 is required, Defendants deny each allegation. Defendants admit the allegations contained in the  
8 third sentence of Paragraph 20.

9       21. In response to the allegations contained in Paragraph 21, Defendants admit that  
10 Chris Oliver is the Assistant Administrator of NMFS. The remaining allegations contained in  
11 Paragraph 21 are conclusions of law, to which no response is required. To the extent a response  
12 is required, Defendants deny each allegation.

13       22. In response to the allegations contained in the first sentence of Paragraph 22,  
14 Defendants admit that the NMFS is an office within the National Oceanic and Atmospheric  
15 Administration (NOAA) and aver that NOAA is a bureau within the Department of Commerce.  
16 The remaining allegations contained in the first sentence of Paragraph 22 are too vague and  
17 ambiguous to permit a response, and Defendants deny them on that basis. In response to the  
18 allegations contained in the second sentence of Paragraph 22, Defendants admit that NMFS has  
19 been delegated authority to regulate fisheries in the EEZ. The remaining allegations contained in  
20 the second sentence of Paragraph 22 are conclusions of law, to which no response is required. To  
21 the extent a response is required, Defendants deny each allegation. Defendants admit the  
22 allegations contained in the third sentence of Paragraph 22.

1       23. In response to the allegations contained in Paragraph 23, Defendants admit that  
2 Wilbur Ross is the Secretary of Commerce. The remaining allegations contained in Paragraph 23  
3 are conclusions of law, to which no response is required. To the extent a response is required,  
4 Defendants deny each allegation.

5       24. Defendants admit the allegations contained in the first sentence of Paragraph 24.  
6 The allegations contained in the second sentence of Paragraph 24 are conclusions of law, to  
7 which no response is required. To the extent a response is required, Defendants deny each  
8 allegation.

9       25. The allegations contained in the first and second sentences of Paragraph 25 are  
10 conclusions of law, to which no response is required. To the extent a response is required,  
11 Defendants deny each allegation. In response to the allegations contained in the third sentence of  
12 Paragraph 25, Defendants admit that NMFS received a letter from Plaintiffs dated and  
13 postmarked January 9, 2020. The remaining allegations contained in the third sentence of  
14 Paragraph 25 are conclusions of law, to which no response is required. To the extent a response  
15 is required, Defendants deny each allegation. The allegations contained in the fourth sentence of  
16 Paragraph 25 purport to characterize a letter, which speaks for itself and is the best evidence of  
17 its contents. Defendants deny any allegation inconsistent with the letter's plain language,  
18 context, or meaning.

19       26. The allegations contained in Paragraph 26 are conclusions of law, to which no  
20 response is required. To the extent a response is required, Defendants deny each allegation.

21       27. The allegations contained in the first sentence of Paragraph 27 are conclusions of  
22 law, to which no response is required. To the extent a response is required, Defendants deny each  
23

1 allegation. Defendants deny the allegations contained in the second, third, and fourth sentences  
2 of Paragraph 27.

3       28. The allegations contained in Paragraph 28 appear to quote and characterize the  
4 Endangered Species Act (ESA), which speaks for itself and is the best evidence of its contents.  
5 Defendants deny any allegation inconsistent with the ESA's plain language, context, or meaning.

6       29. The allegations contained in Paragraph 29 appear to quote and characterize the  
7 ESA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
8 allegation inconsistent with the ESA's plain language, context, or meaning.

9       30. The allegations contained in Paragraph 30 purport to characterize NMFS and Fish  
10 and Wildlife Service (FWS) regulations, which speak for themselves and are the best evidence of  
11 their contents. Defendants deny any allegation inconsistent with the plain language, context, or  
12 meaning of the NMFS and FWS regulations.

13       31. The allegations contained in Paragraph 31 appear to quote and characterize the  
14 ESA and a NMFS regulation, which speak for themselves and are the best evidence of their  
15 contents. Defendants deny any allegation inconsistent with the plain language, context, or  
16 meaning of the ESA or the NMFS regulation.

17       32. The allegations contained in Paragraph 32 appear to quote and characterize the  
18 ESA and NMFS regulations, which speak for themselves and are the best evidence of their  
19 contents. Defendants deny any allegation inconsistent with the plain language, context, or  
20 meaning of the ESA or the NMFS regulations.

21       33. The allegations contained in Paragraph 33 appear to quote and characterize the  
22 ESA and a NMFS regulation, which speak for themselves and are the best evidence of their  
23

1 contents. Defendants deny any allegation inconsistent with the plain language, context, or  
2 meaning of the ESA or the NMFS regulation.

3       34. The allegations contained in Paragraph 34 appear to quote and characterize the  
4       ESA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
5       allegation inconsistent with the ESA's plain language, context, or meaning. The allegations  
6       contained in Paragraph 34 also purport to characterize a court decision, which speaks for itself  
7       and is the best evidence of its contents. Defendants deny any allegation inconsistent with the  
8       plain language, context, or meaning of the court decision.

9       35. The allegations contained in Paragraph 35 appear to quote and characterize a  
10      NMFS regulation, which speaks for itself and is the best evidence of its contents. Defendants  
11      deny any allegation inconsistent with the plain language, context, or meaning of the NMFS  
12      regulation.

13       36. The allegations contained in Paragraph 36 appear to quote and characterize the  
14      ESA and a NMFS regulation, which speak for themselves and are the best evidence of their  
15      contents. Defendants deny any allegation inconsistent with the plain language, context, or  
16      meaning of the ESA or the NMFS regulation.

17       37. The allegations contained in Paragraph 37 appear to quote and characterize the  
18      ESA and a NMFS regulation, which speak for themselves and are the best evidence of their  
19      contents. Defendants deny any allegation inconsistent with the plain language, context, or  
20      meaning of the ESA or the NMFS regulation.

21       38. The allegations contained in Paragraph 38 appear to quote and characterize a  
22      NMFS regulation, which speaks for itself and is the best evidence of its contents. Defendants  
23  
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1 deny any allegation inconsistent with the plain language, context, or meaning of the NMFS  
2 regulation.

3 39. The allegations contained in Paragraph 39 purport to characterize a NMFS  
4 regulation, which speaks for itself and is the best evidence of its contents. Defendants deny any  
5 allegation inconsistent with the plain language, context, or meaning of the NMFS regulation.  
6

7 40. The allegations contained in Paragraph 40 appear to quote and characterize ESA  
8 and a NMFS regulation, which speak for themselves and are the best evidence of their contents.  
9 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
10 ESA or the NMFS regulation. The allegations contained in Paragraph 40 also purport to  
11 characterize a court decision, which speaks for itself and is the best evidence of its contents.  
12 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
13 court decision.  
14

15 41. The allegations contained in Paragraph 41 purport to characterize the ESA and a  
16 NMFS regulation, which speak for themselves and are the best evidence of their contents.  
17 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
18 ESA or the NMFS regulation.  
19

20 42. The allegations contained in the first sentence of Paragraph 42 purport to  
21 characterize a court decision, which speaks for itself and is the best evidence of its contents.  
22 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
23 court decision. The allegations contained in the second sentence of Paragraph 42 appear to quote  
24 and characterize a NMFS regulation, which speaks for itself and is the best evidence of its  
25 contents. Defendants deny any allegation inconsistent with the plain language, context, or  
26 meaning of the NMFS regulation.  
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1       43. The allegations contained in Paragraph 43 purport to characterize the National  
2 Environmental Policy Act (NEPA), which speaks for itself and is the best evidence of its  
3 contents. Defendants deny any allegation inconsistent with NEPA's plain language, context, or  
4 meaning.

5       44. The allegations contained in Paragraph 44 appear to quote and characterize  
6 Council on Environmental Quality (CEQ) regulations, which speak for themselves and are the  
7 best evidence of their contents. Defendants deny any allegation inconsistent with the plain  
8 language, context, or meaning of the CEQ regulations.

9       45. The allegations contained in Paragraph 45 appear to quote and characterize  
10 NEPA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
11 allegation inconsistent with NEPA's plain language, context, or meaning.

12       46. The allegations contained in Paragraph 46 appear to quote and characterize  
13 NEPA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
14 allegation inconsistent with NEPA's plain language, context, or meaning.

15       47. The allegations contained in Paragraph 47 appear to quote and characterize CEQ  
16 regulations, which speak for themselves and are the best evidence of their contents. Defendants  
17 deny any allegation inconsistent with the plain language, context, or meaning of the CEQ  
18 regulations.

19       48. The allegations contained in Paragraph 48 appear to quote and characterize a CEQ  
20 regulation, which speaks for itself and is the best evidence of its contents. Defendants deny any  
21 allegation inconsistent with the plain language, context, or meaning of the CEQ regulation.

22       49. The allegations contained in Paragraph 49 appear to quote and characterize CEQ  
23 regulations, which speak for themselves and are the best evidence of their contents. Defendants  
24

1 deny any allegation inconsistent with the plain language, context, or meaning of the CEQ  
2 regulations.

3 50. The allegations contained in Paragraph 50 appear to quote and characterize  
4 NEPA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
5 allegation inconsistent with NEPA's plain language, context, or meaning.  
6

7 51. The allegations contained in Paragraph 51 appear to quote and characterize a CEQ  
8 regulation and a CEQ document published in the Federal Register, which speak for themselves  
9 and are the best evidence of their contents. Defendants deny any allegation inconsistent with the  
10 plain language, context, or meaning of the CEQ regulation or CEQ document. The allegations  
11 contained in Paragraph 51 also purport to characterize a court decision, which speaks for itself  
12 and is the best evidence of its contents. Defendants deny any allegation inconsistent with the  
13 plain language, context, or meaning of the court decision.  
14

15 52. The allegations contained in Paragraph 52 appear to quote and characterize the  
16 Magnuson-Stevens Fishery Conservation and Management Act (MSA), which speaks for itself  
17 and is the best evidence of its contents. Defendants deny any allegation inconsistent with the  
18 MSA's plain language, context, or meaning.  
19

20 53. The allegations contained in Paragraph 53 appear to quote and characterize the  
21 MSA and a Presidential Proclamation, which speak for themselves and are the best evidence of  
22 their contents. Defendants deny any allegation inconsistent with the plain language, context, or  
23 meaning of the MSA or the Presidential Proclamation.  
24

25 54. The allegations contained in Paragraph 54 purport to characterize the MSA and  
26 two Department of Commerce documents, which speak for themselves and are the best evidence  
27  
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1 of their contents. Defendants deny any allegation inconsistent with the plain language, context,  
2 or meaning of the MSA or the Department of Commerce documents.

3 55. The allegations contained in Paragraph 55 purport to characterize the MSA, which  
4 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
5 inconsistent with the MSA's plain language, context, or meaning.  
6

7 56. The allegations contained in Paragraph 56 appear to quote and characterize the  
8 MSA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
9 allegation inconsistent with the MSA's plain language, context, or meaning.  
10

11 57. The allegations contained in Paragraph 57 purport to characterize the MSA,  
12 which speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
13 inconsistent with the MSA's plain language, context, or meaning.  
14

15 58. The allegations contained in Paragraph 58 purport to characterize the MSA, which  
16 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
17 inconsistent with the MSA's plain language, context, or meaning.  
18

19 59. The allegations contained in Paragraph 59 appear to quote and characterize the  
20 MSA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
21 allegation inconsistent with the MSA's plain language, context, or meaning.  
22

23 60. The allegations contained in Paragraph 60 purport to characterize the  
24 Administrative Procedure Act (APA), which speaks for itself and is the best evidence of its  
25 contents. Defendants deny any allegation inconsistent with the APA's plain language, context, or  
26 meaning.  
27  
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1       61.     The allegations contained in Paragraph 61 appear to quote and characterize the  
 2 APA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
 3 allegation inconsistent with the APA's plain language, context, or meaning.

4       62.     The allegations contained in Paragraph 62 appear to quote and characterize a  
 5 court decision, which speaks for itself and is the best evidence of its contents. Defendants deny  
 6 any allegation inconsistent with the plain language, context, or meaning of the court decision.

7       63.     The allegations contained in Paragraph 63 appear to quote and characterize the  
 8 APA, which speaks for itself and is the best evidence of its contents. Defendants deny any  
 9 allegation inconsistent with the APA's plain language, context, or meaning.

10      64.     In response to the allegations contained in the first sentence of Paragraph 64,  
 11 Defendants admit that SRKW are black and white and known as orcas. The remaining  
 12 allegations contained in the first sentence of Paragraph 64 are too vague and ambiguous to  
 13 permit a response, and Defendants deny them on that basis. Defendants admit the allegations  
 14 contained in the second sentence of Paragraph 64. Defendants lack information or knowledge  
 15 sufficient to form a belief as to the truth of the allegations contained in the third sentence of  
 16 Paragraph 64, and deny the allegations on that basis.

17      65.     Defendants admit the allegations contained in Paragraph 65.

18      66.     In response to the allegations contained in Paragraph 66, Defendants aver that  
 19 SRKW movements are highly variable from year to year. The remaining allegations contained in  
 20 Paragraph 66 are too vague and ambiguous to permit a response, and Defendants deny them on  
 21 that basis.

22      67.     Defendants admit the allegations contained in the first sentence of Paragraph 67.  
 23 The allegations contained in the second, third, fourth, and fifth sentences of Paragraph 67 purport  
 24

1 to characterize the Recovery Plan, which speaks for itself and is the best evidence of its contents.  
 2 Defendants deny any allegation inconsistent with the Recovery Plan's plain language, context, or  
 3 meaning.

4       68. In response to the allegations contained in the first sentence of Paragraph 68,  
 5 Defendants avers that the SRKW population has been declining. The remaining allegations  
 6 contained in the first sentence of Paragraph 68 are too vague and ambiguous to permit a  
 7 response, and Defendants deny them on that basis. The allegations contained in the second and  
 8 third sentences of Paragraph 68 are too vague and ambiguous to permit a response, and  
 9 Defendants deny them on that basis.

10      69. The allegations contained in the first sentence of Paragraph 69 are too vague and  
 11 ambiguous to permit a response, and Defendants deny them on that basis. The allegations  
 12 contained in the second sentence of Paragraph 69 purport to characterize a 2009 BiOp, which  
 13 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
 14 inconsistent with the 2009 BiOp's plain language, context, or meaning.

15      70. The allegations contained in the first sentence of Paragraph 70 are too vague and  
 16 ambiguous to permit a response, and Defendants deny them on that basis. In response to the  
 17 allegations contained in the second sentence of Paragraph 70, Defendants aver that SRKW have  
 18 been observed to spend time both in the Salish Sea and on the West Coast as far south as  
 19 California and as far north as Southeast Alaska. The remaining allegations contained in the  
 20 second sentence of Paragraph 70 are too vague and ambiguous to permit a response, and  
 21 Defendants deny them on that basis. In response to the allegations contained in the third sentence  
 22 of Paragraph 70, Defendants aver that SRKW have been reported to consume a variety of fish  
 23  
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1 species and one species of squid. Defendants deny the remaining allegations contained in the  
2 third sentence of Paragraph 70.

3 71. In response to the allegations contained in Paragraph 71, Defendants aver that the  
4 three most important limiting factors appear to be prey quantity and quality, disturbance from  
5 sound and vessels, and toxic contaminants. Defendants deny the remaining allegations contained  
6 in Paragraph 71.

7 72. The allegations contained in the first sentence of Paragraph 72 are too vague and  
8 ambiguous to permit a response, and Defendants deny them on that basis.

9 73. The allegations contained in Paragraph 73 purport to characterize a population  
10 viability assessment, which speaks for itself and is the best evidence of its contents. Defendants  
11 deny any allegation inconsistent with the population viability assessment's plain language,  
12 context, or meaning.

13 74. Defendants admit the allegations contained in Paragraph 74.

14 75. Defendants admit the allegations contained in Paragraph 75.

15 76. Defendants admit the allegations contained in Paragraph 76.

16 77. Defendants admit the allegations contained in Paragraph 77.

17 78. Defendants admit the allegations contained in Paragraph 78.

18 79. Defendants admit the allegations contained in Paragraph 79.

19 80. In response to the allegations contained in Paragraph 80, Defendants aver that in  
20 the last status review, NMFS determined that the listing status for the ESUs should not be  
21 changed. Defendants lack information or knowledge sufficient to form a belief as to the truth of  
22 the remaining allegations contained in Paragraph 80, and deny the allegations on that basis.

1       81.     The allegations contained in Paragraph 81 are too vague and ambiguous to permit  
2 a response, and Defendants deny them on that basis.

3       82.     The allegations contained in the first sentence of Paragraph 82 purport to  
4 characterize the MSA, which speaks for itself and is the best evidence of its contents. Defendants  
5 deny any allegation inconsistent with the MSA's plain language, context, or meaning. The  
6 allegations contained in the second sentence of Paragraph 82 purport to characterize the Fishery  
7 Management Plan for the Salmon Fisheries in the EEZ Off Alaska (Salmon FMP), which speaks  
8 for itself and is the best evidence of its contents. Defendants deny any allegation inconsistent  
9 with the Salmon FMP's plain language, context, or meaning.

10      83.     The allegations contained in the first sentence of Paragraph 83 purport to  
11 characterize the Salmon FMP, which speaks for itself and is the best evidence of its contents.  
12 Defendants deny any allegation inconsistent with the Salmon FMP's plain language, context, or  
13 meaning. The allegations contained in the second sentence of Paragraph 83 are too vague and  
14 ambiguous to permit a response, and Defendants deny them on that basis.

15      84.     The allegations contained in the first, second, and third sentences of Paragraph 84  
16 purport to characterize the Salmon FMP, which speaks for itself and is the best evidence of its  
17 contents. Defendants deny any allegation inconsistent with the Salmon FMP's plain language,  
18 context, or meaning. In response to the allegations contained in the fourth sentence of Paragraph  
19 84, NMFS avers that it may provide federal funds, through grants, to the State of Alaska to assist  
20 with the State's obligations under the PST, including to monitor and manage commercial and  
21 sport salmon fisheries in Southeast Alaska. The allegations remaining in the fourth sentence of  
22 Paragraph 84 are too vague and ambiguous to permit a response, and Defendants deny them on  
23 that basis.

1       85.     The allegations contained in Paragraph 85 purport to characterize the Salmon  
 2 FMP, which speaks for itself and is the best evidence of its contents. Defendants deny any  
 3 allegation inconsistent with the Salmon FMP's plain language, context, or meaning.

4       86.     The allegations contained in Paragraph 86 purport to characterize the PST, which  
 5 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
 6 inconsistent with the PST's plain language, context, or meaning.

7       87.     The allegations contained in Paragraph 87 purport to characterize the PST, which  
 8 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
 9 inconsistent with the PST's plain language, context, or meaning.

10      88.     The allegations contained in Paragraph 88 appears to quote and characterize a  
 11 2003 Environmental Impact Statement (EIS), which speaks for itself and is the best evidence of  
 12 its contents. Defendants deny any allegation inconsistent with the EIS's plain language, context,  
 13 or meaning.

14      89.     The allegations contained in Paragraph 89 purport to characterize the PST, which  
 15 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
 16 inconsistent with the PST's plain language, context, or meaning.

17      90.     The allegations contained in Paragraph 90 purport to characterize the BiOp, which  
 18 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
 19 inconsistent with the BiOp's plain language, context, or meaning.

20      91.     The allegations contained in the first sentence of Paragraph 91 are too vague and  
 21 ambiguous to permit a response, and Defendants deny them on that basis. Defendants deny the  
 22 allegations contained in the second sentence of Paragraph 91.

1       92.     The allegations contained in Paragraph 92 appear to quote and characterize the  
2 BiOp, which speaks for itself and is the best evidence of its contents. Defendants deny any  
3 allegation inconsistent with the BiOp's plain language, context, or meaning.

4       93.     The allegations contained in Paragraph 93 purport to characterize the BiOp, which  
5 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
6 inconsistent with the BiOp's plain language, context, or meaning.

7       94.     The allegations contained in Paragraph 94 purport to characterize the BiOp, which  
8 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
9 inconsistent with the BiOp's plain language, context, or meaning.

10      95.     The allegations contained in Paragraph 95 are conclusions of law, to which no  
11 response is required. To the extent a response is required, Defendants deny each allegation.

12      96.     The allegations contained in Paragraph 96 appear to quote and characterize the  
13 BiOp, which speaks for itself and is the best evidence of its contents. Defendants deny any  
14 allegation inconsistent with the BiOp's plain language, context, or meaning.

15      97.     The allegations contained in the first, second, third, fourth, and fifth sentences of  
16 Paragraph 97 purport to characterize the BiOp, which speaks for itself and is the best evidence of  
17 its contents. Defendants deny any allegation inconsistent with the BiOp's plain language,  
18 context, or meaning. The allegations contained in the sixth sentence of Paragraph 97 purport to  
19 characterize unidentified data, which speaks for itself and is the best evidence of its contents.  
20 Defendants deny any allegation inconsistent with the plain language, context, or meaning of the  
21 unidentified data.

1       98.     The allegations contained in Paragraph 98 purport to characterize the BiOp, which  
2 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
3 inconsistent with the BiOp's plain language, context, or meaning.

4       99.     The allegations contained in Paragraph 99 purport to characterize the BiOp, which  
5 speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
6 inconsistent with the BiOp's plain language, context, or meaning.

7       100.    The allegations contained in Paragraph 100 appear to quote and characterize the  
8 BiOp, which speaks for itself and is the best evidence of its contents. Defendants deny any  
9 allegation inconsistent with the BiOp's plain language, context, or meaning.

10      101.    The allegations contained in Paragraph 101 purport to characterize the BiOp,  
11 which speaks for itself and is the best evidence of its contents. Defendants deny any allegation  
12 inconsistent with the BiOp's plain language, context, or meaning.

13      102.    The allegations contained in Paragraph 102 appear to quote and characterize the  
14 BiOp, which speaks for itself and is the best evidence of its contents. Defendants deny any  
15 allegation inconsistent with the BiOp's plain language, context, or meaning.

16      103.    The allegations contained in the first, second, and third sentences of Paragraph  
17 103 purport to characterize the BiOp, which speaks for itself and is the best evidence of its  
18 contents. Defendants deny any allegation inconsistent with the BiOp's plain language, context,  
19 or meaning. Defendants deny the allegations contained in the fourth sentence of Paragraph 103.

20      104.    The allegations contained in Paragraph 104 are conclusions of law, to which no  
21 response is required. To the extent a response is required, Defendants deny each allegation.

22      105.    The allegations contained in Paragraph 105 are conclusions of law, to which no  
23 response is required. To the extent a response is required, Defendants deny each allegation.

1       106. The allegations contained in Paragraph 106 are conclusions of law, to which no  
2 response is required. To the extent a response is required, Defendants deny each allegation.

3       107. The allegations contained in Paragraph 107 are conclusions of law, to which no  
4 response is required. To the extent a response is required, Defendants deny each allegation.

5       108. The allegations contained in Paragraph 108 are conclusions of law, to which no  
6 response is required. To the extent a response is required, Defendants deny each allegation.

7       109. The allegations contained in Paragraph 109 are too vague and ambiguous to  
8 permit a response, and Defendants deny them on that basis. The allegations contained in  
9 Footnote 3 purport to characterize Alaska Department of Fish and Game (ADFG) documents,  
10 which speak for themselves and are the best evidence of their contents. Defendants deny any  
11 allegation inconsistent with the plain language, context, or meaning of the ADFG documents.

12       110. The allegations contained in Paragraph 110 are conclusions of law, to which no  
13 response is required. To the extent a response is required, Defendants deny each allegation.

14       111. The allegations contained in the first sentence of Paragraph 111 are conclusions of  
15 law, to which no response is required. To the extent a response is required, Defendants deny each  
16 allegation. The allegations contained in the second and third sentences of Paragraph 111 purport  
17 to characterize the BiOp, which speaks for itself and is the best evidence of its contents.  
18 Defendants deny any allegation inconsistent with the BiOp's plain language, context, or  
19 meaning.

20       112. The allegations contained in Paragraph 112 are conclusions of law, to which no  
21 response is required. To the extent a response is required, Defendants deny each allegation.

22       113. The allegations contained in Paragraph 113 are conclusions of law, to which no  
23 response is required. To the extent a response is required, Defendants deny each allegation.

114. Defendants deny the allegations contained in Paragraph 114.

115. The allegations contained in Paragraph 115 are conclusions of law, to which no response is required. To the extent a response is required, Defendants deny each allegation.

116. Defendants deny the allegations contained in Paragraph 116.

117. The allegations contained in Paragraph 117 are conclusions of law, to which no response is required. To the extent a response is required, Defendants deny each allegation.

118. Defendants deny the allegations contained in Paragraph 118.

119. The allegations contained in Paragraph 119 are conclusions of law, to which no response is required. To the extent a response is required, Defendants deny each allegation.

The remainder of the Complaint constitutes Plaintiff's prayer for relief, to which no response is required. To the extent that a response is required, Defendants deny that Plaintiff is entitled to the relief requested or to any relief whatsoever.

## **GENERAL DENIAL**

Defendants deny any allegations of the Complaint, whether express or implied, that are not otherwise expressly admitted, qualified, or denied herein.

## AFFIRMATIVE DEFENSES

1. The Court lacks jurisdiction over one or more of Plaintiff's claims.
2. Plaintiff failed to exhaust its available administrative remedies.
3. Plaintiff has failed to establish standing.
4. Plaintiff has failed to identify an indispensable party.
5. Plaintiff failed to file within the statute of limitations established by the MSA's judicial review provision.

1 Dated: May 22, 2020

Respectfully submitted,

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3 Deputy Assistant Attorney General  
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6 OF COUNSEL:

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17 *Attorneys for Defendants*

## **CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Washington by using the CM/ECF system, which will serve a copy of the same on the counsel of record.

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